APPENDIX A

EXCERPTS FROM THE TRANSCRIPT OF RECORD IN *EL PASO PRODUCTION COMPANY v. PWG PARTNERSHIP*, CV-89-822.

T.R. 91;

They couldn't create such a right. Thank you, sir.

THE COURT: Thank you very much, Mr. Harnett. The Court having heard argument of counsel would conclude that, first, the PWG defendants do have pleadings to support their claims of ownership. The last pleading that was filed by PWG was limited by court order to answering the additional claims or defenses made by "interlineation," so-called, by El Paso. There's no question that PWG claims it owns the property here by virtue of conveyances having been made to it, by virtue of other theories that have been mentioned, by presumption, and so on. So the Court will deny that portion of the motion in limine, asking the Court to determine that the PWG defendants have no pleadings to support their claims of ownership. The Court also would say that these claims of ownership are repeated in the pretrial order, which was approved by Judge Onuska, and this was in January, I believe, 1991.

Mr. Harnett, the Court is sympathetic with you in this respect: This Court, in holding pretrial—this Court, in its pretrial procedure, would require the attorneys to set forth certain statements of their claims factually, legal theories, many other things. But the Court would require a pretrial conferencen [sic] to be had, in which the Court participated; and the Court would require that the pretrial order be made by it, the Court; and the Court would nail all the attorneys down to the general nature of the facts they intended to try to elicit, and the legal theories supporting those facts; and the Court would require the attorneys to

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T.R. 1400;

seen instruments reflecting it, so now I'm aware of it. I don't think I thought they had any value at the time, in any event, and it would not have been the intent that those properties—there was never any discussion regarding an option to purchase to go into these properties. It was all properties, and I really—and even today have trouble saying that an option to purchase is an effecting—although I guess it probably is—

THE COURT: Excuse me, Mr. Harnett. That an option to purchase is—what?

MR. JAY HARNETT: "Is an effecting;" that's just what the witness says, Your Honor.

THE COURT: OK; all right.

A. —although I guess it probably is, in legal terms, is not a title interest, it's not a property interest. It's an option to purchase title; and if it was discussed, it was either agreed to pay no attention to it, and it was not my understanding that it would be in here. If it was an option to purchase—now, that's different from what I understood, a carried working interest.

Q. And so I need to understand, then, is it your testimony that you do remember discussion that there existed an option, or are you simply saying that if there had existed, it would not have been important to your deal?

A. I guess I'm saying, I can't say for sure whether I ever heard of it or not. If I had heard of it, I would not have considered it material.

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T.R. 1401;

Q. Would you please restate your reasons why it would not have been material?

A. I didn't think it had any value, de minimum value.

Q. Do you remember any discussions, any specific discussions, about that particular option, at any time before today?

A. Not specifically. As I corrected my prior testimony, I sort of vaguely do recall, either there was an option, or I was aware of it, but it was not part of these negotiations or title transfers.

Q. When you put a price upon the option that you granted to Mike Abraham for the purchase of your 200,000 shares of Rincon, were you aware of the existence of an option to repurchase?

A. I'll repeat that: If I were aware of it, which I could have been, I didn't give any value to it, or no part of that number reflected as to a value of an option to repurchase.

MR. JOLLEY: Page 117, line 8, through page 118, line 7; commencing page 120, line 3 through 6. This is a question by Mr. Slade.

REDIRECT EXAMINATION

BY MR. SLADE:

Q. And on redirect examination—cross-examination, Mr. Briones mentioned your affidavit, and asked whether you still stood by all the statements in the affidavit. I just wanted to check on one or two points on that.

A. Certainly.

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T.R. 2217;

be for the day, if you have a dispute, you're not supposed to go out and shoot each other, beat each other up; you're supposed to go to the courthouse; and I think the Abrahams had every right, under the facts of this case—never hearing from El Paso that their rights were ready to pay some money, never heard that, and they put their faith in El Paso, that El Paso would do what it said it would do, but it didn't. They also had the right to assume that an interloper would not wrongly interfer with their contract, which was exactly what was done in this case; and it would just be a great injustice, in my opinion, for an in-

terloper to be able to take the rights away—the contractual rights, something sacred, away from the Abrahams, when they had nothing to do with it, or misleading them, or anything else.

By the way, there's no pleading—there's no pleading of the PWG on this user-possession claim. It's not in the pretrial order. El Paso Natural Gas Company has it in their contentions on GLA-59. So there is no evidence of it, either, except a little bit on the liquid hydrocarbons, but certainly not on the option to repurchase. Thank you.

THE COURT: Thank you very much, Mr. Hartnett. The Court appreciates your argument, understands your position very clearly at this point. Why don't we take about a seven- or eight-minute recess, and try to start again about quarter of 11:00? I'd like to have a chance to look over this brief, before we start with Mr. Gallegos.

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T.R. 2222;

hadn't occurred, and there could not have been a material breach of the debtor's obligation, assuming arguendo that the debtor, Mike Abraham, had any obligation under a true option. Therefore, there would not have—the GLA-59 option would not have been an executory contract, as of the time of Mike Abraham's bankruptcy.

THE COURT: Thank you very kindly, Mr. Oja. The Court appreciates that.

MR. HARTNETT: Your Honor, may I make an objection?

THE COURT: Yes, Mr. Hartnett. What is your objection, please? Why don't you take the lectern, if you would?

MR. HARTNETT: Your Honor, I object to the PWG defendants' Trial Brief No. 8, the doctrine of presumption of grant. I was just furnished that, just prior to my argument, and now I've had a look at it, and this

is not supported by the contentions of PWG in the pre-trial order.

THE COURT: The Court thinks it is. The Court discussed it at the motions hearing. There was a brief on presumption of grant, prior to the motions hearing, that the PWG defendants had submitted. The Court read it and commented on it at that point. There is a claim in the pleadings that the PWG defendants are the owners of the property, a general allegation, and that permits PWG to assert any theory justified under the facts, and also the very first objection made by you, Mr. Hartnett, on Tuesday, the beginning of the actual trial on the merits between the two parties here, the Court overruled your objection on the ground that the

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